

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES TOWNSLEY, MICHAEL)	
SAURO, WALTER NOFFSINGER, ROSA)	
DAVIDSON, MICHAEL KELLY, TITON)	
HOQUE, JANET GELPHMAN, THANH)	
DO,)	
)	
)	
Plaintiffs,)	
v.)	Case No. 1:20-cv-00969-LY
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION,)	
)	
Defendant.)	
)	

DEFENDANT’S OPPOSED MOTION
TO MAINTAIN CONFIDENTIALITY DESIGNATIONS

EXHIBIT 1

Declaration of Edward M. “Ted” Smith

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DAVIDSON, MICHAEL KELLY, TITON)
HOQUE, JANET GELPHMAN, THANH)
DO,)

Plaintiffs,)

v.)

Case No. 1:20-cv-00969-LY

INTERNATIONAL BUSINESS)
MACHINES CORPORATION,)

Defendant.)

DECLARATION OF EDWARD M. “TED” SMITH

I, Edward M. “Ted” Smith, declare and state as follows:

1. I am a Partner in the law firm of Cornell Smith Mierl Brutocao Burton, LLP, located at 1607 West Avenue, Austin, Texas 78701. My Texas State Bar No. is 00791682. I am one of the attorneys representing Defendant International Business Machines Corporation (“IBM”) in the above-captioned matter. I submit this declaration in support of Defendant’s Opposed Motion to Maintain Confidentiality Designations (“Motion”).

2. I make this statement based on my personal knowledge. If called as a witness, I could and would competently testify to the facts contained herein.

3. On January 7, 2021, Plaintiffs served IBM with Plaintiffs’ First Requests for Production to Defendant, which consisted entirely of requests for documents that hit on certain search terms from IBM executives’ emails, including the former Chief Executive Officer; the current Chief Executive Officer and former Senior Vice President for the Cloud group; the former Chief Human Resources Officer; the current Chief Financial Officer; the former Senior

Vice President, Corporate Strategy; the former Senior Vice President, IBM Global Markets and former Chief Financial Officer; and a Vice President of Human Resources.

4. While the documents requested did not relate to any of the Plaintiffs, in order to avoid a dispute, IBM agreed to produce them subject to a carveout for entirely irrelevant categories of documents such as, for example, executives' medical information, personal communications, and client disputes. IBM subsequently produced over 36,000 documents responsive to the requests.

5. On February 8, 2021, the parties agreed to the entry of this District's standard Confidentiality and Protective Order (Dkt. 35) ("Protective Order"). The Protective Order is substantially in the form of Appendix H to the Local Rules of the United States District Court for the Western District of Texas.

6. The Protective Order contemplates four levels of designation: *Nonclassified Information*, *Classified Information* (herein referred to as "Confidential"), *For Counsel or Attorneys Eyes Only* (herein referred to as "AEO"), and *Ultrasensitive*.

7. On July 1, 2021, Plaintiffs' counsel sent me a letter stating that Plaintiffs objected to IBM's confidentiality designations of 68 specified documents (Plaintiffs described the number challenged as 60 documents, but upon a review of the documents IBM determined there were 68 unique documents at issue). Of the 68 challenged documents, 37 had been produced by IBM with a "Confidential – Attorneys' Eyes Only" designation and 31 were produced with a "Confidential" designation.

8. In response to the letter, IBM conducted an extensive review of the challenged documents. Based on that review, on July 23, 2021, IBM responded to Plaintiffs by agreeing to remove six confidentiality designations entirely and lower 36 AEO designations to Confidential.

After that review, only one document remained classified as AEO. IBM also attached an itemized chart to its July 23, 2021 letter detailing the legal grounds under the Protective Order for its respective designations for each challenged document, as well as its modified designations for certain documents.

9. By letter dated August 13, 2021, Plaintiffs' counsel responded to IBM's July 23, 2021 letter. In that letter, Plaintiffs' counsel again requested that IBM completely de-designate all 62 remaining documents. Plaintiffs' August 13 letter did not substantively respond to any of IBM's detailed and particularized explanations for its designations of the remaining 62 documents. Plaintiffs simply reiterated their request that all 62 documents be de-designated, citing a purported need for de-designation because of the "transition into depositions," and claiming that IBM's designations were solely to avoid "public scrutiny of embarrassing evidence." By the same letter, Plaintiffs formally notified IBM of their challenge to the designations of all documents referenced in Plaintiffs' initial letter under paragraph 11 of the Protective Order.

10. On August 18, 2021, IBM sent Plaintiffs a letter inviting them to respond in a more substantive manner, on a document-by-document basis, to enable a more meaningful informal resolution process and ideally avoid or narrow the scope of the dispute that would need to be brought to the Court.

11. Plaintiffs' counsel responded by letter dated August 20, 2021, declining IBM's request to address its designations on a more particularized basis and confirming the need for a judicial ruling. Despite all this, as well as a further meet and confer between counsel by videoconference, Plaintiffs' counsel have insisted on judicial resolution.

12. With regard to the documents at issue, Defendant IBM has set forth in the Motion that it will provide the documents for *in camera* review should the Court wish to review them at this time. In addition, contemporaneously with the Motion, IBM is also submitting a declaration from Sam Ladah, the current HR Vice President for IBM Global Markets, and former HR Vice President for IBM Global Technology Services, IBM Cloud, and IBM's Talent group, among other positions. Mr. Ladah's declaration explains in greater detail IBM's bases for its confidentiality designations for many of the challenged documents and similar documents, which are divided into several categories. These categories are: Business Group Planning, Communication Strategy, Competitive Analysis, Contracting, Employee Compensation, Headcount Reductions, Hiring, People Statistics, Performance Management, Retention, Skill Mix, and Skills Initiatives. For the Court's convenience, attached to this declaration as Exhibit A is a version of the chart IBM sent to Plaintiffs on July 23, 2021, modified to show IBM's original and modified designations, as well as the categories into which each challenged document falls, as set forth in Mr. Ladah's declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 27, 2021
Austin, Texas



Edward M. "Ted" Smith

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EXHIBIT A
to the Declaration of Edward M. “Ted” Smith

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Ladah Declaration Paragraph
2	IBMK - 000093260 – 000093302	Confidential	Maintain as Confidential.	Business Group Planning	Ladah Dec. ¶ 26
3	IBMK-000049841-000049855	AEO	Maintain as AEO.	Business Group Planning	Ladah Dec. ¶ 26
4	IBMK-000073352-000073352	Confidential	Maintain as Confidential.	Business Group Planning	Ladah Dec. ¶ 26
5	IBMK-000093220-000093221	AEO	Lower to Confidential.	Business Group Planning	Ladah Dec. ¶ 26
6	IBMK-000093260-000093261	Confidential	Maintain as Confidential.	Business Group Planning	Ladah Dec. ¶ 26
7	IBMK-000118498-000118499	AEO	Lower to Confidential.	Business Group Planning	Ladah Dec. ¶ 26
8	IBMK-000043859-000043863	AEO	Lower to Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
9	IBMK-000067604-000067605	AEO	Lower to Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
10	IBMK-000067650-000067651	AEO	Lower to Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Ladah Declaration Paragraph
11	IBMK-000067652-IBMK-000067653	AEO	Lower to Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
12	IBMK-000068586-000068587	AEO	Lower to Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
13	IBMK-000068816-000068817	AEO	Lower to Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
14	IBMK-000072057-000072060	Confidential	Maintain as Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
15	IBMK-000089100-000089103	AEO	Lower to Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
16	IBMK-000091886-000091895	Confidential	Maintain as Confidential.	Communication Strategy/Other Executive Communications	Ladah Dec. ¶ 27
17	IBMK-000056472-000056475	AEO	Lower to Confidential.	Competitive Analysis	Ladah Dec. ¶ 18
18	IBMK-000064963-IBMK-000064963	AEO	Lower to Confidential.	Competitive Analysis	Ladah Dec. ¶ 18
19	IBMK-000064963-IBMK-000064967	AEO	Lower to Confidential.	Competitive Analysis	Ladah Dec. ¶ 18

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Ladah Declaration Paragraph
20	IBMK-000065323-000065327	AEO	Lower to Confidential.	Competitive Analysis	Ladah Dec. ¶ 18
21	IBMK-000065622-000065624	AEO	Lower to Confidential.	Competitive Analysis	Ladah Dec. ¶ 18
22	IBMK-000071709-000071711	Confidential	Maintain as Confidential.	Competitive Analysis	Ladah Dec. ¶ 18
23	IBMK-000093664-000093666	AEO	Lower to Confidential.	Competitive Analysis	Ladah Dec. ¶ 18
24	IBMK-000133785-000133786	Confidential	Maintain as Confidential.	Competitive Analysis	Ladah Dec. ¶ 18
25	IBMK-000091046-000091047	AEO	Lower to Confidential.	Contracting	Ladah Dec. ¶ 24
26	IBMK-000076921-000076922	AEO	Lower to Confidential.	Contracting	Ladah Dec. ¶ 24
27	IBMK-000041625-000041627	AEO	Lower to Confidential.	Employee Compensation	Ladah Dec. ¶ 25
28	IBMK - 000131861 – 000131862	Confidential	Maintain as Confidential.	Headcount Reductions	Ladah Dec. ¶ 23

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Ladah Declaration Paragraph
29	IBMK-000044836-000044836	AEO	Lower to Confidential with redactions.	Headcount Reductions	Ladah Dec. ¶ 23
30	IBMK-000057028-000057032	AEO	Lower to Confidential.	Headcount Reductions	Ladah Dec. ¶ 23
31	IBMK-000089760-000089762	Confidential	Maintain as Confidential.	Headcount Reductions	Ladah Dec. ¶ 23
32	IBMK-000131861-000131861	Confidential	Maintain as Confidential.	Headcount Reductions	Ladah Dec. ¶ 23
33	IBMK-000000037-000000037	AEO	Lower to Confidential.	Hiring	Ladah Dec. ¶¶ 15-16
34	IBMK-000049913-000049914	Confidential	Maintain as Confidential.	Hiring	Ladah Dec. ¶¶ 15-16
35	IBMK-000049915-000049916	Confidential	Maintain as Confidential.	Hiring	Ladah Dec. ¶¶ 15-16
36	IBMK-000056328-000056330	Confidential	Maintain as Confidential.	Hiring	Ladah Dec. ¶¶ 15-16
37	IBMK-000088551-000088551	Confidential	Maintain as Confidential.	Hiring	Ladah Dec. ¶¶ 15-16

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Lada Declaration Paragraph
38	IBMK-000033476-000033489	Confidential	Remove Confidentiality Designation.	N/A	N/A
39	IBMK-000035281-000035282	Confidential	Remove Confidentiality Designation with redactions.	N/A	N/A
40	IBMK-000088357-000088357	Confidential	Remove Confidentiality Designation.	N/A	N/A
41	IBMK-000093309-000093309	Confidential	Remove Confidentiality Designation.	N/A	N/A
42	IBMK-000093310 - IBMK-000093333	Confidential	Remove Confidentiality Designation.	N/A	N/A
43	IBMK-000072043-000072053	Confidential	Remove Confidentiality Designation.	N/A	N/A
44	IBMK - 000154202 – 000154216	AEO	Lower to Confidential.	People Statistics	Ladah Dec. ¶ 11
45	IBMK-000056610-IBMK-000056611	AEO	Lower to Confidential.	People Statistics	Ladah Dec. ¶ 11
46	IBMK-000088245-000088246	Confidential	Maintain as Confidential.	People Statistics	Ladah Dec. ¶ 11

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Ladah Declaration Paragraph
47	IBMK-000153457-000153460	AEO	Lower to Confidential.	People Statistics	Ladah Dec. ¶ 11
48	IBMK-000154005-000154006	AEO	Lower to Confidential.	People Statistics	Ladah Dec. ¶ 11
49	IBMK-000154202-000154203	AEO	Lower to Confidential.	People Statistics	Ladah Dec. ¶ 11
50	IBMK-000154515-000154533	AEO	Lower to Confidential.	People Statistics	Ladah Dec. ¶ 11
51	IBMK-000154929-000154937	AEO	Lower to Confidential.	People Statistics	Ladah Dec. ¶ 11
52	IBMK-000148604-000148605	Confidential	Maintain as Confidential.	People Statistics	Ladah Dec. ¶ 11
53	IBMK-000148606-IBMK-000148608	Confidential	Maintain as Confidential.	People Statistics	Ladah Dec. ¶ 11
54	IBMK-000042193-000042202	Confidential	Maintain as Confidential.	Performance Management	Ladah Dec. ¶ 22
55	IBMK-000046900-000046903	AEO	Lower to Confidential.	Performance Management	Ladah Dec. ¶ 22

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Ladah Declaration Paragraph
56	IBMK-000088252-000088255	Confidential	Maintain as Confidential.	Performance Management	Ladah Dec. ¶ 22
57	IBMK-000133500-000133504	Confidential	Maintain as Confidential.	Performance Management	Ladah Dec. ¶ 22
58	IBMK-000042257-000042267	AEO	Lower to Confidential.	Retention	Ladah Dec. ¶ 17
59	IBMK-000043301-000043311	AEO	Lower to Confidential.	Retention	Ladah Dec. ¶ 17
60	IBMK-000146724-000146726	Confidential	Maintain as Confidential.	Skill Mix	Ladah Dec. ¶ 14
61	IBMK - 000131266 – 000131267	Confidential	Maintain as Confidential.	Skills Initiatives	Ladah Dec. ¶ 21
62	IBMK-000034565-000034566	Confidential	Maintain as Confidential.	Skills Initiatives	Ladah Dec. ¶ 21
63	IBMK-000041491-000041492	Confidential	Maintain as Confidential.	Skills Initiatives	Ladah Dec. ¶ 21
64	IBMK-000064829-000064832	AEO	Lower to Confidential.	Skills Initiatives	Ladah Dec. ¶ 21

	A	B	C	D	E
1	Bates #	IBM's Original Confidentiality Designation	IBM's Modified Designation	Category	Corresponding Ladah Declaration Paragraph
65	IBMK-000065442-000065446	AEO	Lower to Confidential.	Skills Initiatives	Ladah Dec. ¶ 21
66	IBMK-000065453-000065458	AEO	Lower to Confidential.	Skills Initiatives	Ladah Dec. ¶ 21
67	IBMK-000088516-000088517	AEO	Lower to Confidential.	Skills Initiatives	Ladah Dec. ¶ 21
68	IBMK-000131262-000131265	Confidential	Maintain as Confidential.	Skills Initiatives	Ladah Dec. ¶ 21
69	IBMK-000152339-000152341	AEO	Lower to Confidential with redactions.	Skills Initiatives	Ladah Dec. ¶ 21